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10/537,566	11/09/2005	Christopher Paul Revill	1316K-000028/NP	3569

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EXAMINER

AMORES, KAREN J

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3616

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte: CHRISTOPHER PAUL REVILL and RAYMOND A. MUNDAY

Application No. 10/537,566
Technology Center 3600

Mailed: February 25, 2010

Before QUITA GOULD *Supervisory Paralegal Specialist*
GOULD, *Supervisory Paralegal Specialist*.

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on February 1, 2010. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter(s) requiring attention prior to docketing.

APPEAL BRIEF, HEADINGS

A review of the file indicates that the Appeal Brief filed April 14, 2009 does not comply with 37 C.F.R. § 41.37(c) because it does not contain all required heading items. Specifically, 37 C.F.R. § 41.37 (c)(1) requires the following heading items in the following order:

- (i) *Real party in interest.*
- (ii) *Related appeals and interferences.*
- (iii) *Status of claims.*
- (iv) *Status of amendments.*
- (v) *Summary of claimed subject matter.*
- (vi) *Grounds of rejection to be reviewed on appeal.*
- (vii) *Argument.*
- (viii) *Claims appendix.*
- (ix) *Evidence appendix.*
- (x) *Related proceedings appendix.*

Upon an in-depth review of the Appeal Brief the section entitled Summary of the Claimed Invention should be entitled Summary of Claimed Subject Matter.

A substitute brief that is in compliance with § 41.37(c) is required. *See also Manual of Patent Examining Procedure* (MPEP) § 1205.02 (8th ed. Rev. 6, Sept 2007) for details.

APPEAL BRIEF, SUMMARY OF CLAIMED SUBJECT MATTER

Appellants filed an Appeal Brief dated April 14, 2009. The Appeal Brief is not in compliance with 37 C.F.R. § 41.37(c) effective September 13, 2004.

According to 37 C.F.R. § 41.37(c)(v), an Appeal Brief must include the following:

(v) *Summary Of Claimed Subject Matter.* A concise explanation of the subject matter defined in each of the independent claims involved in the appeal, which must refer to the Specification by page and line number, and to the drawing, if any, by reference characters. For each independent claim involved in the appeal and for each dependent claim argued separately under the provisions of 37 C.F.R. § 41.37(c)(1)(vii), every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, must be identified and the structure, material, or acts described in the Specification as corresponding to each claimed function must be set forth with reference to the Specification by page and line number, and to the drawing, if any, by reference characters.

The “Summary of Claimed Invention” which should be entitled “Summary of Claimed Subject Matter” appearing on pages 5-8 of the Appeal Brief filed April 14, 2009 is deficient because it does not refer to the Specification as filed with the application for independent claims 1, 6, and 7. Correction is required.

MPEP § 1205.03 states in part:

(B) When the Office holds the brief to be defective solely due to Appellants failure to provide a Summary of the Claimed Subject Matter as required by 37 C.F.R. § 41.37(c)(1)(v), an entire new brief need not, and should not, be filed. Rather, a paper providing a Summary of the Claimed Subject Matter as required by 37 C.F.R. § 41.37(c)(1)(v) will suffice. Failure to timely respond to the Office's requirement will result in dismissal of the appeal. See MPEP § 1215.04 and § 711.02(b).

CONCLUSION

Accordingly, it is

ORDERED that the application is returned to the Examiner to:

- 1) to hold the Appeal Brief filed April 14, 2009 defective;
- 2) notify the Appellants to submit a "paper" which corrects the Appeal Brief's Summary of Claimed Subject Matter under 37 C.F.R. §41.37(c)(1)(v);
- 3) acknowledge and consider any "paper" submitted by Appellants to correct the Appeal Brief; and
- 4) for such further action as may be appropriate.

Application No. 10/537,566

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

QG/Ssc

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